

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE CHIEF JUDGE KIMBERLY J. MUELLER

Dilevon Lo, Jerry Vang, Nathan Thao, Mao Thao, Pao Lee, Antonio Lee, Koua Lee, Nhia Thai Vang, Zeng Lee, Der Lee and Khue Cha,

Plaintiffs,
vs.

Sacramento, California
No. 2:21-CV-00999-KJM
Friday, August 6, 2021
11:00 a.m.

7 County of Siskiyou; Jeremiah LaRue Fr
8 and Jesus Fernandez, in their official 11
9 capacities as members of the
Siskiyou County Sheriff's Department
and in their individual capacities;
and Brandon Criss, Ed Valenzuela, Michael
10 N. Kobseff, Nancy Ogren, and
Ray A. Haupt, in their official capacities
11 as members of the Siskiyou County Board
12 of Supervisors and in their individual
capacities; Edward Kiernan, in his official
capacity as County Counsel for
13 Siskiyou County and in his individual
capacity; and DOES 1-100.

Defendants

- 2 -

REPORTER'S TRANSCRIPT OF PROCEEDINGS

RE: PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

(Hearing conducted via Zoom videoconference)

--909--

21 APPEARANCES:

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1 SACRAMENTO, CALIFORNIA, FRIDAY, AUGUST 6, 2021, 11:00 A.M.

2 --oo--

3 THE CLERK: Calling civil case 21-999; Lo, et al., v.
4 County of Siskiyou, et al. This is on for plaintiffs' motion
5 for preliminary injunction.

6 THE COURT: All right. Appearing for plaintiffs.

7 Lead counsel --

8 MR. LAWRENCE: Good morning --

9 MS. MARGOLIN: Morning, your Honor --

10 THE COURT: Lead counsel.

11 MS. MARGOLIN: Good morning, your Honor. I am lead
12 counsel. However, Mr. Lawrence and I have determined that when
13 the Court asks a question, he will argue first, and then I
14 will -- if the Court doesn't mind -- I'll just buttress his
15 argument afterward, just because we're not in the same
16 location.

17 Would that work for the Court?

18 THE COURT: Have you divided up by subject area? The
19 rule is one attorney per -- per subject area.

20 MS. MARGOLIN: Okay. Well, Mr. Lawrence will be doing
21 the argument then on all the subject areas, and then at the
22 end, maybe the Court could just leave me -- allow me leave to
23 argue for a few minutes.

24 But Mr. Lawrence will be answering the questions.

25 THE COURT: All right.

1 MS. MARGOLIN: Thank you.

2 THE COURT: Mr. Lawrence, your appearance.

3 MR. LAWRENCE: Yes. Good morning, your Honor. This
4 is attorney Raza Lawrence from the Margolin, Lawrence Law
5 Office appearing via Zoom, and I'm representing all of the
6 plaintiffs in this action.

7 THE COURT: All right. Good morning to you, Mr.
8 Lawrence.

9 For the County of Siskiyou.

10 MR. DONALD: Good morning, your Honor. This is Scott
11 Donald. I'll be lead counsel and arguing on behalf of all of
12 the defendants, except for the California Department of Fire.

13 THE COURT: All right. Is Department of Fire
14 represented here this morning?

15 Mr. Spinelli, you're -- you are monitoring?

16 MR. SPINELLI: I'm just watching, your Honor. Thank
17 you.

18 THE COURT: All right.

19 MR. DONALD: Your Honor, I don't believe so. I
20 haven't seen any evidence that they've either been served or
21 they have made any form of an appearance in this case.

22 THE COURT: All right. Just checking.

23 All right. I do have several questions here, and
24 before I get to those questions, I -- I just want to make
25 certain -- it is up to the Court, fundamental to Article III is

1 neutrality and, you know, full independence.

2 And so the Court always thinks about whether or not it
3 can decide a case fully and fairly. This Court believes it can
4 do that here, but I want to make certain that the parties know,
5 as chief judge of the court currently, I have duties in
6 addition to presiding over cases.

7 And given this Court's need for judicial resources,
8 one of those duties has been to provide information to Congress
9 about our need. Courts don't lobby, but we do, on occasion, we
10 sometimes are asked to provide information to Congress, and
11 then we have the ability to make certain that members of
12 Congress have information.

13 So this judge testified before the Senate -- the House
14 subcommittee on Court's intellectual property and internet
15 earlier this year, and this Court has provided information to
16 members of Congress who represent parts of this district.

17 We are a very large district, 34 counties. 11 members
18 of Congress represent this district. Congressman LaMalfa is
19 one of those. So this Court has spoken briefly to Congressman
20 LaMalfa only about that issue of need for judicial resources
21 and provided one letter providing information.

22 Again, I have thought carefully. In my mind, that
23 does not make me unable to decide this case fairly, but I just
24 wanted to make that disclosure so the parties are aware of it.
25 I'm not asking you to respond today, but if either party has a

1 concern, they can file something with the Court given that the
2 congressman's name is invoked in some of the filings.

3 So generally, I just want to say, I cannot say that I
4 regret -- I cannot say that the filings, the supplement
5 filings, the record before the Court, are as helpful as they
6 should be given what appears to be the significance of this
7 matter.

8 And there are -- the Court questions whether or not
9 plaintiffs, in particular, should associate counsel very
10 experienced in -- in federal preliminary injunction practice.

11 But both sides -- there's -- there's information here
12 that appears to be getting in the way of the Courts having what
13 it needs to decide this question fully and fairly.

14 And I'm going to explain that as we go forward here,
15 but one example for the plaintiffs, before I get into the
16 specific questions, this Court has rules regarding the length
17 of replies.

18 Replies are not to exceed ten pages. A party can
19 request that a reply exceed ten pages. Here we have a 30-page
20 reply. Now, this Court at times has said, well, I'm not going
21 to read past the first ten pages.

22 Here I have read the reply brief because of the
23 importance of this matter based on what I can see about what
24 appear to be facts on the ground.

25 But it's not until the last ten pages of the reply

1 that plaintiffs appear to start to address the merits questions
2 that are critical to the Court's resolution of the pending
3 motion as quickly as possible given what may be at stake.

4 So I'm considering the reply, but reminding
5 plaintiffs' counsel of their obligation to follow the rules and
6 think in advance about whether or not they need to ask for an
7 exception of the rules. I am sua sponte directing a sur-reply.
8 I'm just cutting to the chase here.

9 Given what's in the reply, I believe it is essential
10 for a fair record, for me to hear what the defendants have to
11 say, unless they tell me they are submitting on the record.

12 But particularly given the last ten pages arguing the
13 equal protection issues, in particular, my inclination is to
14 give the defendants a short period of time, up to seven days,
15 to give me a sur-reply of no more than ten pages.

16 I think it could be five pages if it just focuses on
17 the last ten pages of the reply, so --

18 MR. DONALD: Your Honor, then I'm going to have to
19 accept that, given if that's -- that's being offered right now.
20 It doesn't appear that I -- I guess I'm puzzled by the timing
21 of the request. I mean, the timing of your statement on that,
22 so I apologize for interrupting you.

23 THE COURT: Well, the reply was filed August 4th.

24 MR. DONALD: I guess that's partly my question, your
25 Honor, and I guess the point is that you obviously have a

1 question remaining that you need addressed, so I will address
2 that then in a sur-reply.

3 THE COURT: Well, I'll -- you'll get a better sense of
4 where the Court is on all of this. I'm not only -- I'm not
5 only directing the sur-reply to ensure the record is complete,
6 but I am -- I am -- we'll see how this hearing goes, but I'm
7 inclined to send you to mandatory settlement to focus on, what
8 could be critical issues, to the extent I can discern them from
9 this record.

10 They don't have to do with -- with water for
11 marijuana. They have to do with Water for People. A named
12 plaintiff. So at least some of the named plaintiffs, it does
13 appear, are saying under oath they are not receiving sufficient
14 water for day-to-day living.

15 The Court had this concern when it saw the TRO papers,
16 but it noted at that point none of the evidence before the
17 Court related to any named plaintiff.

18 So that's why I'm expressing some concerns about how
19 the matter is, or is not, teed up.

20 At least now, it appears to the Court, there are
21 certain named plaintiffs who have under oath said they are not
22 getting enough water to bathe more than once a week. To water
23 their non-marijuana gardens. To water their livestock and
24 animals that they rely on for food. So that -- that appears to
25 be in the record, and I cannot ignore it.

1 But so on the likelihood of success on the merits,
2 critical to whether or not the Court would grant a preliminary
3 injunction. Let me just ask these questions of plaintiffs'
4 counsel:

5 The motion before the Court refers to Title VI.
6 There's no Title VI claim in the complaint. So I can't grant
7 injunctive relief based on Title VI, right, Mr. Lawrence?

8 MR. LAWRENCE: Yes, your Honor.

9 THE COURT: All right. Same with Government Code
10 Section 11135. No claim under 11135 in the complaint. I can't
11 grant injunctive relief based on that, correct?

12 MR. LAWRENCE: Yes, your Honor. I understand.

13 THE COURT: All right. Due process, the plaintiff --
14 this is one of two issues that starts to get developed in the
15 reply. There's due process, and there's equal protection.

16 On due process, the complaint alleges plaintiffs are
17 deprived of property rights to water without due process.

18 The county has provided information on the process
19 that it afforded the community at large. The -- the plaintiffs
20 say they haven't gotten due process, but I'm not seeing that
21 that issue is developed. It's an undeveloped argument without
22 any evidence.

23 So Mr. Lawrence, is there evidence to support a
24 deprivation of due process that you can point me to?

25 MR. LAWRENCE: Your Honor, one of the -- I think this

1 is tied into the equal protection issue, and one of the items
2 that we look at in looking at whether there's discriminatory
3 intent and due process, is whether there were departures from
4 standard procedural or substantive processes here.

5 And I think the way that this law was passed and
6 imposed, basically cutting off access to water to an entire
7 ethnic community, just by fiat, like I believe that that does
8 implicate due process concerns and there was no -- there was no
9 real assessment of the situation.

10 No ability of people to have a right to be heard
11 within the community. But this was just a highly irregular
12 process where they are imposing burdensome rules on one
13 specific ethnic community that do not apply to anybody else,
14 and --

15 THE COURT: So is that procedural due process, or
16 substantive due process, or both?

17 MR. LAWRENCE: I believe it could be both. I believe
18 in the procedures -- in the procedural due process that these
19 individual members of the community did not really have a right
20 to be heard and respond.

21 In terms of substantive due process, I think just in
22 terms of their right to live their lives in this community and
23 have access to the basic items that they need. How that was
24 just cut off by this ordinance, I believe, could also be
25 substantive due process.

1 THE COURT: All right. But still, where is the
2 evidence? Is there -- just focus on due process. We're
3 getting to equal protection. Is there evidence in the record
4 to support the argument the plaintiffs were deprived procedural
5 due process or that the county's actions violate substantive
6 due process?

7 MR. LAWRENCE: Well, just in terms of procedural due
8 process, in terms of the plaintiffs who live in the community,
9 but are not themselves landowners, there's no real procedure
10 even being given to them to get -- to get water.

11 There's a procedure for certain landowners to go
12 through this permit system, but in terms of the people who
13 don't even own -- there is no procedure being afforded to them
14 to get the water, and then in terms of getting a water truck --

15 THE COURT REPORTER: I'm sorry, Counsel --

16 THE COURT: I think you have to slow down and speak up
17 and more clearly.

18 THE COURT REPORTER: You were cutting in and out.

19 MR. LAWRENCE: So first of all, this procedure that
20 they've provided through the permit system for the permits for
21 the water trucks, it appears that only landowners can follow
22 this, and there are a number of people in this community,
23 including some of the plaintiffs who are not themselves
24 landowners, but they live in the community, and they are not
25 being given any procedure to access water.

1 In addition, their ability to get these permits to get
2 the water, it's dependent on them, first, having a well owner
3 who themselves has an extraction permit for use off-site. The
4 person who has been providing the water to the community, the
5 farmer Steve Griset, he does not have this extraction permit.

6 In fact, he's been the subject of a lawsuit by the
7 county that's been ongoing for several months about his pumping
8 the water.

9 So the majority of people in this community are --
10 there's no way for them to follow this process that's been set
11 out to access the water through the permit system.

12 So we believe that that is a due-process violation,
13 and that they're not given any procedure to get the water
14 unless the well owner has this permit, which they do not, and
15 unless they're landowners themselves.

16 THE COURT: So when the defense says: No plaintiff
17 has applied for a permit, your response would be: No plaintiff
18 is eligible to apply?

19 MR. LAWRENCE: Well, that -- that's correct. Just
20 because the person providing the source of their water, the
21 farmer, he doesn't have the required permit, which was also
22 passed on the same day the extraction permit for use of the
23 site, so because the plaintiffs -- the person that has access
24 to the water source, doesn't have the new permit set up at the
25 same time as the requirement.

1 They really have no way to get a permit themselves, so
2 they have no way to access the water, period. There's no
3 access for them to show that they are -- to get the water from
4 a source where they can access it --

5 THE COURT: Well -- well, all right. So to the extent
6 that falls within due process, let me just ask Mr. Donald, I
7 did have a question about the focus of land ownership and the
8 official residences of owners of the land.

9 Because it's -- if plaintiffs aren't owners, it
10 doesn't mean they may not have rights.

11 MR. DONALD: Agreed, your Honor. But the rights that
12 the folks that would be inhabiting a particular lot wouldn't
13 get a greater right than the people that own that property, and
14 if the people that own that property who would apply for a
15 permit -- and I'm just saying hypothetical, because I don't
16 agree that the record shows any form of a procedural due
17 process violation.

18 There's other ways of these people getting water, and
19 we're -- again, we're talking about agricultural water in large
20 quantities. Not potable water. Water delivered by water
21 trucks.

22 The property owners have a -- can't get these large
23 amounts of water without getting a permit. There's no
24 demonstration that even the owner of the property tried to get
25 a permit. Nobody has tried to get to a permit.

1 And it's up to the plaintiffs to establish this due
2 process concern by effectively taking an act and have a
3 colorable claim, which none of them have demonstrated at this
4 point.

5 THE COURT: But do you dispute that the plaintiffs, or
6 at least or most of them, the plaintiffs aren't able to apply
7 themselves for a permit?

8 MR. DONALD: We have no idea. We have no idea.
9 There's not enough sufficient evidence that has been -- in my
10 view -- purposefully left out -- for us to know. We don't know
11 what they can or cannot do.

12 THE COURT: Isn't it your -- your position is that
13 most, if not all of the named plaintiffs, are not the owners of
14 the land, correct?

15 MR. DONALD: They may or may not be. I don't know.

16 THE COURT: Well let's just assume for sake of
17 argument, accept what Mr. Lawrence is saying, plaintiffs aren't
18 the owners. Under that scenario, plaintiffs could not apply
19 for a permit themselves, correct?

20 MR. DONALD: No, your Honor. There are several of the
21 plaintiffs, at least five of them, are owners of their
22 property. So one would expect that one of those people would
23 have applied for a permit, and they have not.

24 THE COURT: Mr. Lawrence, just agreed, at least five
25 plaintiffs are owners in the Mt. Shasta subdivision? You need

1 to unmute.

2 MR. LAWRENCE: Yes. There are some that are owners, I
3 believe, that were highlighted in defendants' most recent
4 filing. I believe that number is approximately five. There
5 are some that do not appear to be property owners, but...

6 THE COURT: So for those who are, well, the record
7 shows they've applied for a permit and been denied.

8 MR. LAWRENCE: The record shows that some of them
9 owned some undeveloped land in the subdivision. That doesn't
10 necessarily mean those are the plots that they reside on. I
11 know that some people reside with friends, family, et cetera.

12 I think that this focus on the ownership issue is kind
13 of a red herring. I think the relevant inquiry is whether
14 these are residents of this community. Under California law,
15 "residents" are defined as people who physically reside in a
16 certain area.

17 And whether they are also property owners, I don't
18 believe that that's a prerequisite of having constitutional
19 rights that they can --

20 THE COURT REPORTER: I'm sorry, Counsel. You're
21 cutting in and out.

22 (Whereupon, the reporter read back)

23 THE COURT: Can you pick up from there, Mr. Lawrence?

24 MR. LAWRENCE: Yes. The point is that for these
25 constitutional considerations, I believe the inquiry should be

1 whether these are residents of this community. It doesn't
2 matter whether they own any specific plot of land, or whether
3 the plot of land that they are currently residing on is owned
4 by -- in terms of the cultural context here, a lot of the Hmong
5 community are -- have a very communal way of living.

6 They help each other. They support each other. So we
7 could develop the record further with additional evidence about
8 who owns what land, but I don't believe that that's really the
9 most relevant consideration here.

10 The point is, do they live in this community, and have
11 they been afforded a reasonable process to obtain access to
12 water?

13 THE COURT: I understand that argument. Just so I'm
14 clear, on procedural due process, basically you are saying that
15 there's nothing in the record, except that the county has
16 provided me, for me to determine whether or not the process by
17 which the ordinances were adopted violates procedural due
18 process, correct, Mr. Lawrence?

19 MR. LAWRENCE: Well, there was the original -- I mean,
20 these ordinances were additionally adopted on an urgency basis.
21 Essentially, not giving any right to have people respond, but I
22 believe the way these were pushed through initially on an
23 urgency basis, opportunity for consideration, that would be a
24 matter for procedural due process.

25 But just in terms of -- once the laws are passed, in

1 terms of the people's ability to apply for water from the
2 government, especially since Mr. Griset, the farmer, doesn't
3 have the required permit himself, there's no -- there's in
4 effect, no procedure for any of the people to actually act in
5 the way that --

6 THE COURT: Yeah, you -- you're -- I understand you
7 are using procedure in one way, but I understand what you are
8 saying.

9 On overbreadth, I just want to check on this, because
10 the plaintiffs also argue the County's regulations violate
11 overbreadth. I'm not seeing that the Supreme Court has ever
12 described the overbreadth doctrine in a way that -- that limits
13 it to First Amendment protections.

14 I don't see that the Ninth Circuit -- I mean, the
15 Supreme Court has suggested it is limited to First Amendment.
16 I don't see that the Ninth Circuit has recognized a doctrine
17 that goes beyond First Amendment.

18 And so I -- I don't see how overbreadth can support
19 the granting of injunctive relief.

20 Mr. Lawrence, disagree with the Court's understanding
21 of Supreme Court or Ninth Circuit law on overbreadth?

22 MR. LAWRENCE: So I understand that overbreadth is an
23 important consideration in First Amendment cases, and one of
24 our points that we've fleshed out a little bit in our most
25 recent brief is we believe that Plaintiffs, themselves, are

1 being subjected to an ongoing violation of their Fourteenth
2 Amendment rights to equal protection of the laws and First
3 Amendment rights to freedom of association given the government
4 officials' comments that they are trying to choke out the
5 community, and the various evidence that we've submitted
6 that -- suggesting that they are attempting to drive these
7 people off the land and disperse the community.

8 So I believe that is an important First Amendment
9 right, freedom of association, that's being attacked, but I
10 also believe overbreadth can be evidence of discriminatory
11 intent and purpose covering -- making life more difficult for
12 people beyond what is supposedly being targeted, which is the
13 cultivation of cannabis and certain environmental crimes.

14 That -- that if there were a regulation targeting
15 those specifically, that that would be -- perhaps pass
16 constitutional muster, but because these laws are interfering
17 with everybody's lives in this community, in a very overbroad
18 fashion, that itself is evidence of discriminatory intent and
19 purpose.

20 THE COURT: All right. That seems to merge the -- a
21 factual understanding of overbreadth with the legal concept,
22 and I understand the argument, but I am not seeing any
23 authority for -- for characterization of any freedom of
24 association claim.

25 So is that -- I understand factually what you are

1 saying, but it sounds like a novel argument, trying to bring
2 freedom of association --

3 MR. LAWRENCE: And in a way, it's somewhat novel.

4 It's come up in response to some of the comments that we've
5 seen quoted in our briefs from the sheriff, from the board of
6 supervisors, from the district attorney that essentially make
7 it appear as if the county is --

8 THE COURT: I'm asking about legal authority. Are you
9 thinking of any -- any Supreme Court, Ninth Circuit, even
10 District Court authority that -- that blesses the way in which
11 you are characterizing freedom of association for purposes of
12 overbreadth claim.

13 MR. LAWRENCE: Your Honor, I don't have any particular
14 case on point on that -- on that topic, but would be -- we
15 could provide additional briefing on that if the Court would
16 like.

17 THE COURT: All right. So then turning to equal
18 protection, and I had signaled -- it's due process and equal
19 protection -- in particular, equal protection -- that the Court
20 believes deserves the greatest focus here, and that's why I'm
21 providing for the -- the sur-reply.

22 Would you agree, Mr. Lawrence, that ultimately the
23 Court has to think about what the record shows about the
24 County's intent?

25 MR. LAWRENCE: That's correct. I would agree.

1 THE COURT: There's competing information, and of
2 course plaintiff has the burden at this point. So on the one
3 hand, my sense of the record is that there is evidence that the
4 county has submitted -- it hasn't been tested through --
5 through full discovery or trial, of course -- but suggesting
6 the focus on Mt. Shasta is -- legal marijuana cultivation in
7 that area is much more intense than in other parts of the
8 county.

9 It's increased rapidly in scale. It's led to an
10 increase in violent crime and conflicts, including violent
11 crime against some of the Hmong residents of the Mt. Shasta
12 community.

13 So the county, in its briefing, is not painting the
14 Hmong community as -- as a montalift. Some of the plaintiffs'
15 expert's declaration indicates that at least infrared
16 information suggests there are other areas of the county where
17 marijuana cultivation is as intense, but those areas are not
18 targeted by the ordinance, by the County's identification of
19 roads, its enforcement against traffic on certain roads that
20 lead only into the Mt. Shasta community.

21 So let me ask Mr. Donald that question. Why is there
22 not an inference to be drawn from the exclusive focus in terms
23 of identification of roads leading into Mt. Shasta that -- that
24 does allow an inference of ill intent towards this community in
25 particular?

1 MR. DONALD: Well, your Honor, I think the concern or
2 the question is really one of the -- the happenstance of a
3 certain group of people, perhaps, being in one area where a
4 significant amount of crime is occurring.

5 And that the focus of the statute -- the ordinances in
6 question are pretty clear. They're to curb illegal
7 cultivas (sic) -- the illegal cultivation of cannabis. And
8 there is nothing on the face, and two of them are countywide.
9 Only one of them is focused on the -- which is the water
10 trucks.

11 And that water truck ordinance is very specific as to
12 why, and it's because that area is -- and I believe our
13 declarations show, and even the declarations and the statements
14 that plaintiffs quote in their affidavits coming from my
15 clients, from particularly the sheriff, that that area is one
16 of extremely high concentration of marijuana growth, and
17 extremely high concentration of related problems that go along
18 with that marijuana growth.

19 Frankly this decision, which is extremely important,
20 and I understand that, there's a lot of questions about whether
21 or not the focus should be on the agricultural water and the
22 delivery and extremely large quantities of agricultural water,
23 which is what the ordinance targets, versus the intended issues
24 for the residents of Mt. Shasta Vista who are residing, from
25 all the evidence that you have at this point, in a manner that

1 is unsafe.

2 They are either relying on unpotable water for daily
3 living, which is obviously -- it's not our position that they
4 are. Our position is all that water is intended for illegal
5 cannabis cultivation.

6 But that the water that's being regulated, not
7 prohibited, but regulated, is specific to large quantities of
8 agricultural water, and the trucks were going into that area in
9 large quantities, 100 a day. That's the declaration. That's
10 the evidence that's before this Court.

11 THE COURT: So Mr. Lawrence, fundamentally -- and I
12 should acknowledge. I didn't knowledge his presence earlier,
13 but the lead plaintiff is -- I did allow the lead plaintiff
14 into the virtual courtroom, so he's able to see and hear from
15 this vantage point. Others I believe are monitoring the
16 hearing by phone. It's the attorneys who are speaking for him,
17 of course.

18 So Mr. Lawrence, it's the plaintiffs' burden. Why is
19 not a fair assessment of the record before the Court that they
20 are equally balanced competing positions and, therefore,
21 plaintiff cannot prevail?

22 MR. LAWRENCE: Your Honor, I believe the appropriate
23 legal inquiry is set out in the *Mhany Management v. City of*
24 *Nassau* case from the Second Circuit that we quoted from in our
25 most recent brief. And that case itself applies factors from

1 the Supreme Court case, *Village of Arlington Heights v. Metro*
2 *Housing Development, Corp.*

3 Both of those cases dealt with issues of fair housing
4 and also the equal protection clause, and they both dealt with
5 the particular issue of how to infer discriminatory intent when
6 it's rarely susceptible to direct proof.

7 Usually the government officials are not explicitly
8 saying that they are passing it for racist reasons, but it
9 deals with the disparate impact issue, and then how do you tell
10 whether that's being driven by discriminatory intent versus
11 lawful reasons.

12 And the first factor to look at is whether the
13 official action bears more heavily on one race than another. I
14 feel like this is almost undisputed. We've shown that they've
15 cut off water into -- the only way into this Hmong community
16 through rules that don't apply to anyone else in the state.

17 I don't think that the defendants have really disputed
18 this, so I think that we have the disparate impact, and then if
19 you shift to looking at the intent. The courts say you look at
20 the historical background of the situation. How this community
21 has been treated. I think we have a long track record of
22 discrimination against the Hmong people, specifically in
23 Siskiyou County.

24 And also whether there's departures from the normal
25 procedural sequence or substantive departures. I think here

1 the way they've cut off water to the entire community through
2 this ordinance, I think it's highly unusual.

3 And then the legislative or administrative history and
4 contemporary statements by the officials. I think here we've
5 pointed to, specifically statements from Sheriff LaRue, where
6 he's essentially saying everybody who lives in this community,
7 his most recent comment was all 6,000 of them, they are all
8 growing cannabis.

9 That they are all criminals, and during the -- when
10 this -- the restrictions were passed, he spoke, Sheriff LaRue,
11 at the board of supervisors' meeting and he says, basically, we
12 need to choke them out. We need to go after everybody here.
13 Not just the growers, he said, but essentially everybody in the
14 community.

15 And we have Supervisor Haupt recently claiming that
16 this is all part of a criminal cartel. So I think the way the
17 local officials are essentially painting everybody who lives in
18 this community, thousands of them, as criminals when the
19 evidence is some of them are growing cannabis illegally, some
20 are not.

21 But the way that the officials have spoken about this
22 community, the way that they have targeted them specifically
23 with these laws, I think they all point to discriminatory
24 intent.

25 Just -- the other factor about discriminatory intent,

1 just the fact that the government has tried to actually enforce
2 the cannabis criminal laws, the environmental criminal laws,
3 that they can actually enforce (Zoom drop) at issue. Rather
4 than doing that in a targeted way, they've gone after this
5 entire community trying to choke them out.

6 That goes to the overbreadth issue again, but I think
7 that that also points to discriminatory intent, but I think if
8 you look at each of the factors in *Arlington Heights*, um,
9 opinion, they all point to a finding of discrimination even
10 though -- even if there may not be a particular quote saying
11 that they are doing this for discriminatory reasons.

12 THE COURT: Let me just ask Mr. Lawrence in follow-up,
13 and then to the extent the evidence is in equipoise, plaintiffs
14 don't meet their burden, but I don't see -- apart from the
15 expert's declaration, and the reference to other areas where
16 there are dense marijuana grows, I don't see evidence from the
17 plaintiffs showing that crime, conflicts, public health
18 problems, permitting problems, other environmental problems are
19 comparable in other areas of the county, as compared to Mt.
20 Shasta, and whether or not illegal marijuana grows and impact
21 on water supply, ground water supply, is equal or greater in
22 other parts of the county.

23 Is there evidence beside a portion of -- is it Mr.
24 Szendrey's declaration -- that suggests that, but doesn't
25 develop it?

1 MR. LAWRENCE: Well, I believe the strongest evidence
2 is the sheriff's own report, the 2021 strategic report, where
3 they lay out specific regions in the county that are having
4 these alleged cannabis cultivations and environmental problems,
5 and they identify specifically the regions where these problems
6 are taking place.

7 Also, I think just the lack of the evidence that the
8 government's actually prosecuted anyone within the Shasta Vista
9 community for any environmental crimes, when there are a host
10 of them that could be charged, I don't see any evidence that
11 these environmental problems actually do exist in Mt. Shasta
12 Vista more concentrated than they do anywhere else in the
13 county.

14 THE COURT: All right. Then here -- here is -- I
15 am -- I mean you can object, but my very strong intention,
16 unless I hear something in the next few minutes, is to send you
17 to mandatory settlement by early next week.

18 I have identified experienced competent mediators.
19 The Ninth Circuit has a crew of very qualified mediators, and
20 I've spoken to the lead mediator. Someone can be available
21 early next week.

22 I'm going to send you to mandatory settlement to
23 answer some focused questions while I wait for the defendants'
24 sur-reply on -- in response to what's in the reply,
25 particularly on equal protection, can also address due process

1 if the defendants want to.

2 But the question is: Is there not the ability to see
3 if there is a settlement that could be achieved allowing the
4 Hmong community to import limited amounts of potable water?
5 Not for growing marijuana. Not in quantities linked clearly to
6 growing marijuana, but to meet basic needs.

7 The basic needs identified in the declarations, the
8 supplemental declarations, and what does that look like?
9 There's one declaration that says the plaintiffs proposed using
10 fire houses as water sources for certain quantities of water
11 and heard nothing in response.

12 MR. DONALD: Your Honor, can I address --

13 THE COURT: Well, let me finish --

14 MR. DONALD: All right.

15 THE COURT: I'll call on you in just a moment.

16 But that's the Court's plan, because I cannot
17 ignore -- I cannot say there's no equal protection claim there
18 that can undergird the granting of a preliminary motion, as I
19 sit here now, and in the meantime, I cannot let more time pass,
20 given what some of the declarations say.

21 So that's the Court's plan. Mr. Donald, and then --
22 I've heard a lot from you, Mr. Lawrence, because I've had a lot
23 of questions for you, but Mr. Donald and then Mr. Lawrence
24 could wrap up.

25 MR. DONALD: All right. Thank you, your Honor. First

1 of all I'd like to address the Court's express concern
2 regarding mediation. I want to make sure that I understand
3 what the Court's asking for here, because the ordinance doesn't
4 address potable water.

5 This isn't about bringing potable water in. There are
6 certain types of trucks that deliver potable water, and those
7 aren't at issue. If the plaintiffs wanted to bring potable
8 water into the MSV, the area in question, they can do that now.

9 That's not the issue. The issue is agricultural water
10 drawn from wells. It's not potable. It's intended only for
11 agricultural purposes. So if we're talking about potable
12 water, I don't think we're on the same page as to what this
13 case is about. This case isn't about that.

14 THE COURT: Well, there is a dispute. Some of the
15 plaintiffs are construing their declarations fairly. They are
16 saying they are not getting potable water. I realize we
17 disagree. This is where a mediator might cut through on an
18 expedited basis what's really going on.

19 Ultimately, if -- if it's clear the plaintiffs have
20 access, and through their own fault, they are not getting
21 potable water, so be it. I'm not here to be the settlement
22 judge. I'm just telling you, I have supplemental declarations
23 from named plaintiffs saying they aren't getting potable
24 water.

25 MR. DONALD: And I understand that, your Honor. But I

1 also understand that we're here today to hear a motion for
2 preliminary injunction following a TRO related to three statues
3 that's been before this Court and has been briefed numerous
4 times now by plaintiffs, twice by me, and in all of those
5 instances, they have focused on an ordinance, 2108, that speaks
6 to water trucks pumping agricultural water. There's nothing
7 about -- that's a specific narrowly tailored statute.
8 It doesn't deal with all forms of water delivery.

9 So from a standpoint of a settlement, I think it's
10 premature at this point, because what's before the Court right
11 now is a fairly straightforward ordinance that addresses ag
12 water. It doesn't address potable water.

13 Plaintiffs may take the position that they can't get
14 potable water, but it's not based on those ordinances, and they
15 have to -- their burden of proof -- they have the burden of
16 proof. They have to show why an ag ordinance that limits 100
17 gallons or more, somehow keeps them from getting drinking
18 water. They haven't done that.

19 THE COURT: And that's what you may put in your
20 sur-reply. And I -- if you may have noticed, Mr. Lawrence has
21 gotten most of the questions here today.

22 MR. DONALD: Thank you.

23 THE COURT: I have pointed to the burdens. I'm not
24 telegraphing how I'm going to resolve the preliminary
25 injunction motion. I've narrowed the possible grounds. It's

1 due process or equal protection. I've told you equal
2 protection has the most heft to it based on what I can
3 currently see.

4 I'm just saying I can't sit by while I give you the
5 fair chance to further clarify your position. I understand
6 that position. Put it in writing. I think -- I think some
7 focused, very focused, not a whole case, very focused
8 mediation, a trained mediator who knows how to cut to the
9 chase, makes sense. In case there is some humanitarian,
10 inadvertent humanitarian --

11 MR. DONALD: Consequence. I understand that, your
12 Honor.

13 THE COURT: Yes. Yes, all right. Mr. Lawrence, any
14 final word?

15 MR. LAWRENCE: Yes, just briefly. Just in response to
16 counsel's last comment. I don't believe ordinance
17 distinguishes between potable or non-potable water. A water
18 truck is defined as -- as banning a transportation of water
19 over 100 gallons. It doesn't just apply to non-potable.

20 The other point is even if they do get non-potable
21 water from these trucks, you could boil it to drink it, which I
22 believe that many do, and also it can be used for their
23 gardens, for their animals, bathing and cleaning. The regular
24 daily use needs for water.

25 In terms of the mediation, I believe that that would

1 be helpful. There's been -- community members have reached out
2 to government officials over the past few weeks trying to sit
3 down and negotiate something, so far without success. But I
4 believe if the Court directs the parties to mediation, that
5 that would be good for everybody involved to see if we can
6 potentially resolve this.

7 THE COURT: All right. That's what I'm going to do.
8 You'll see a docket entry this afternoon directing you to
9 mediation with an identified mediator, and then the defense has
10 seven days -- up to seven days to provide a sur-reply, ten
11 pages max, given the new arguments in the reply, and then the
12 matter is submitted. All right. Thank you very much.

13 MR. DONALD: Thank you.

14 THE COURT: You may sign off.

15 MR. LAWRENCE: Thank you.

16 THE CLERK: Court is in recess.

17 (The proceedings adjourned at 11:46 a.m.)

18 --oo--

19 I certify that the foregoing is a correct transcript from the
20 record of proceedings in the above-entitled matter.

21 /s/ Tiphanne G. Crowe

22

TIPHANNE G. CROWE
CSR No. 10958

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